

1992

The State of Utah v. Lamonte J. Bagley : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 920191

BRIEF

IN THE COURT OF APPEALS IN AND FOR
THE STATE OF UTAH

THE STATE OF UTAH :
 :
 Plaintiff and : Case No. 920191-CA
 Appellee, :
 :
 vs. :
 : BRIEF OF APPELLANT
 LAMONTE J. BAGLEY, :
 : Priority Classification No. 2
 Defendant and :
 Appellant :

BRIEF OF APPELLANT

THIS IS AN APPEAL FROM CONVICTION OF THE DEFENDANT -
APPELLANT ON CHARGES OF POSSESSION OF A CONTROLLED
SUBSTANCE, A THIRD DEGREE FELONY

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FILED

OCT 19 1992

Clerk of the Court

IN THE COURT OF APPEALS IN AND FOR
THE STATE OF UTAH

THE STATE OF UTAH	:	
Plaintiff and	:	Case No. 920191-CA
Appellee,	:	
vs.	:	
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff-Appellee, : Case No. 920191-CA
vs. :
LAMONTE J. BAGLEY, :
Defendant-Appellant. : Priority Classification No. 2

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal concerning the ruling on the defendants Motion to Suppress Evidence by the Fourth Judicial District Court.

This Court has jurisdiction to hear the appeal under Utah Code Ann. Section 78-2a-3(2) (e) (1992). The Defendant appeals the judgement on the Motion to Suppress.

STATEMENT OF ISSUES PRESENTED AND STANDARD OF REVIEW

The issues presented on appeal are:

1. Was the drug evidence seized by a lawful search of defendants car through lawful consent, or by reason of probable cause?
2. Should the evidence obtained during an illegal search be admitted as evidence?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Defendant, Lamonte Bagley, and John R. Popejoy, not a party to this appeal, were traveling northbound on I-15 near Nephi, Utah. The defendant was stopped by Trooper Paul Mangelson, of the Utah Highway Patrol, and subsequently arrested for possession of illegal drugs.

The defendant made a Motion to suppress the drug evidence on the basis that it was illegally obtained. This motion was denied by the Fourth Judicial District Court. Mr. Bagley was tried by a jury and found guilty of Third degree felony. He was sentenced to serve time. The defendant now appeals this sentence on the arguments presented in this brief.

STATEMENT OF THE FACTS

On May 14, 1992 the defendant was passenger in the car driving through Juab County. It is the defendants testimony that the trip was to and from Mesquite, Nevada for the purpose of acquiring some car parts. (T. page 103.)

At approximately 2:50 p.m. on May 14, 1992, Trooper Paul

Mangelson, stopped the car for going 70 m.p.h. in a 65 m.p.h. zone. Trooper Mangelson obtained a valid drivers license and registration. Mangelson then testified that he detected an odor of marijuana about the vehicle. He then made further inquiries as to where they had been. (T. page 63 and 64.)

Trooper Mangelson then testified that the driver, Mr. Popejoy, became increasingly nervous as Mangelson continued to ask questions. Based on this nervousness, Trooper Mangelson asked if they were in possession of any drugs, and continued questioning by asking permission to search the vehicle. (T. page 65.) Mangelson testified that the defendant and Mr. Popejoy were extremely cooperative and started showing Mangelson the vehicle. (T. page 65.)

However, the defendant testified that when Mangelson asked to search the vehicle, both himself and Mr. Popejoy replied in the negative. (T. page 115.) In fact when Trooper Mangelson wanted to look in the trunk of the car, and Mr. Popejoy objected, asking if a search warrant was needed, Trooper Mangelson replied that none was needed. (T. page 116.)

After Trooper Mangelson checked the interior of the vehicle, he then, to the objection of the occupants, asked to look in the trunk of the car. Over the objection of the occupants a search was conducted. There were a couple of suitcases found in the

trunk. A large gray suit case was claimed, according to the officers testimony, by the defendant. However, the defendant claims that Mr. Popejoy said that the suitcase belonged to the defendant, when in fact the suitcase belonged to Mr. Popejoy. The defendant was intimidated and afraid of Mr. Popejoy and did not make any objection, as to the ownership designation of the suitcase. (T. page 66 and 120.)

The defendant testified that when asked to open the suitcase, he said that the lock sticks and a screwdriver may be necessary to open the suitcase. The Trooper then went to his car and retrieved the screwdriver. Mangelson then looked at the Defendant and said, "Why don't you just open it? I know what's in it. I can smell it." Trooper Mangelson also testified that he could detect the odor of raw marijuana. (T. page 67.)

SUMMARY OF ARGUMENT

There was no probable cause for the search of the vehicle in which the defendant was passenger. This is for several reasons; First, the searching trooper based his search on the nervous behavior of the driver of the car, reasoning that nervousness means that something illegal is transpiring. However, many jurisdictions have found that nervous behavior is not probable cause for a search. Second, the trial court should have found that the defendant was entitled to miranda warnings against self-

incrimination. The accusatory statements by Trooper Mangelson, subjects the defendant to custodial interrogation. And third, the testimony of the defendant and the arresting officer is conflicting, and the court should have been cautious that the evidence was weighed properly.

ARGUMENT

POINT I

THERE WAS NO PROBABLE CAUSE FOR TROOPER MANGELSON TO SEARCH THE VEHICLE

In the Fourth Amendment to the United States Constitution and the Constitution of Utah, Article I, Section 14, individuals are specifically guaranteed the right that they will be secured against unreasonable searches and seizures. In the present case it will be shown that these rights of the defendant were violated.

As the uncontested facts state, the defendant was a passenger in a car stopped by Utah Highway Patrol Trooper, Paul Mangelson, for speeding. Trooper Mangelson testified that he asked to search the vehicle on the basis that the driver, Mr. Popejoy, was acting nervous. This is clearly no cause for the search of the defendants vehicle.

Many individuals may find themselves intimidated and nervous when stopped by an officer for even a routine traffic violation. The courts have stated that nervous behavior is not a

justifiable cause for the search of a vehicle. In the Sierra case, and State v. Lovegren 183 Utah Adv. Rep. 81, the courts address "nervous behavior". Quoting from Seirra the court states:

Such nervous conduct on Sierra's part when confronted by a Utah Highway Patrol trooper is consistent with innocent as well as criminal behavior. See Trujillo, 739 P.2d at 89. Sierra did not try to evade Officer Smith, nor did he attempt to conceal anything when pursued by Officer Smith. See Mendoza, 748 P.2d 184. Sierra changed lanes and pulled over to the emergency lane upon Officer Smith's signal.

The defendant, Mr. Bagley and the driver of the vehicle, Mr. Popejoy, acted in the same manner as Mr. Sierra, acting nervous but at the same time being very cooperative. In Sierra, the court found that nervous behavior is not probable cause to suspect an individual of criminal activity.

Based on the lack of probable cause for a search of a vehicle, the evidence obtained should have been suppressed.

POINT II

THE COURT SHOULD HAVE WEIGHED CAREFULLY THE CONFLICTING TESTIMONY

As it is stated in the context of this brief, the testimony of Trooper Mangelson and Mr. Bagley is conflicting. Due to that fact, the court should have used caution in determining the validity of the officers actions.

In the present case as the record has shown there was

some conflict in the testimony as to the consent to search the vehicle. Trooper Mangelson testifies that Mr. Bagley and Mr. Popejoy were very cooperative. (T. page). However, conflicting with Trooper Mangelson's testimony, is the testimony of the defendant. He testified that neither he or Mr. Popejoy consented to the search of the vehicle. In fact, Mr. Popejoy even asked Trooper Mangelson if a search warrant was needed to search the trunk.

The courts have set out a standard to determine valid consent to search a vehicle. In State v. Webb, 790 P.2d 65 (Utah App. 1990), the court states that it is the burden of the State to prove that the consent was voluntary. Webb goes on to present an analysis which a court must use to show that the State has met its burden of proof.

(1) There must be clear and positive testimony that the consent was "unequivocal and specific" and "freely and intelligently given"; (2) The government must prove consent was given without duress or coercion, express or implied; and (3) the courts indulge every reasonable presumption against the waiver of fundamental constitutional rights and there must be convincing evidence that such rights were waived.

The burden was not met by the state showing that there was any consent to search the vehicle in question.

The court may have based the admission of evidence on the

testimony that there was consent to the search. This testimony conflicted with the testimony of the defendant. The court in State v. Ramirez, 817 P.2d 774 (Utah 1991) the court states:

We further note that in considering the lawfulness of the stop and the seizure and search, the trial court should regard with caution any claim that the suspect "consented." The realities of interactions between private citizens and the police are such that "consent" is often merely a fiction, particularly when it results from illegal police conduct.


As Ramirez states the court should be cautious when being approached by the "consent to search" exception to the Fourth Amendment to the United States Constitution, which protects an individuals rights against searches and seizures.

The court should find that there was no probable cause to search the vehicle and there was no consent by the defendant to the search of the vehicle, and therefore should find the evidence found in the search inadmissible.

CONCLUSION

Based on the foregoing arguments, this court should reverse the decision made on the Motion to Suppress.

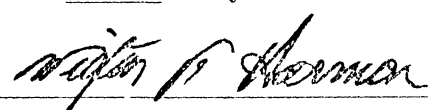
DATED this 15th day of October, 1992.



MILTON T. HARMON
Attorney for the Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief Of Appellant to: Mr. Lamonte J. Bagley, 1254 West 11th North SLC, UT 84116; Mr. Donald J. Eyre J. Juab County Attorney, 125 North main Street, Nephi, UT 84648; and to Mr. R. Paul Van Dam, Utah Attorney General, State Capitol Building, Salt Lake City, UT 84111; first-class postage prepaid, this 15th day of October, 1992.



ADDENDUM

CONSTITUTION OF THE UNITED STATES

AMENDMENT V

[Criminal actions — Provisions concerning —
**Due process of law and just compensation
clauses.**]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF UTAH

ARTICLE I

DECLARATION OF RIGHTS

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.